

borrower and creditors which may result in reaching an agreement.

(7) Failure of creditors to participate in a voluntary meeting of creditors will not preclude FmHA or its successor agency under Public Law 103-354 from using debt writedown if it would result in a greater net recovery to FmHA or its successor agency under Public Law 103-354 than liquidation. Whenever the net recovery to FmHA or its successor agency under Public Law 103-354 will be greater using the writedown than to go through foreclosure, FmHA or its successor agency under Public Law 103-354 will use the writedown, regardless of the actions of the other creditors. Voluntary meetings of creditors cannot delay consideration of a borrower for Primary Loan Service Programs, except with the consent of the borrower.

(8) If the borrower does not participate in the voluntary meeting of creditors without good cause and a feasible plan of operation cannot be developed, the County Supervisor will send the borrower attachments 5 and 6, or 5-A and 6-A, of exhibit A of this subpart, as applicable.

**§ 1951.913 Servicing Net Recovery Buyout Recapture Agreements.**

(a) *Death or retirement.* If upon the death or retirement of a borrower who submitted a "new application," as defined in § 1951.906 of this subpart, the borrower executed exhibit C-1 of this subpart and transferred title of the borrower's real estate security to a spouse or child who is actively engaged in farming on the property, then the transaction will not be treated as a "sale" or "conveyance" under the recapture agreement. The borrower's spouse or child, however, must assume the full liability of the borrower under the provisions of the borrower's Net Recovery Buyout Recapture Agreement and real estate lien instrument in accordance with instructions from OGC.

(b) *Record of net recovery buyout.* The Finance Office will credit the borrower's account with the net recovery value (NRV) amount paid by the borrower. An equity record will be established in accordance with the provisions of the ADPS manual.

(1) For borrowers who applied for Loan Servicing and Preservation Service Programs before November 28, 1990, and executed exhibit C of this subpart, a recapture equity record will be established in an amount equal to the difference between the NRV and the market value of the real estate security as of the date the net recovery buyout agreement was signed by the borrower.

(2) For borrowers who submit "new applications," as defined in § 1951.906 of this subpart, and execute exhibit C-1 of this subpart, an equity record will be established in an amount equal to the amount of debt secured by real estate that was written off as of the date the net recovery buyout agreement was signed by the borrower. This is the maximum amount that can be recaptured.

(c) *Review by County Supervisor.* The County Supervisor will establish a follow-up to review the County real estate records every 24 months starting from the date of the Net Recovery Buyout Recapture Agreement to determine if the borrower has sold or conveyed the real estate property covered by the agreement. Scheduled reviews to be conducted must be posted on the borrower's Form FmHA or its successor agency under Public Law 103-354 1905-1, "Management System Card—Individual," for follow-up purposes. The results of the review will be recorded in the borrower's County Office case file. These reviews will end at the expiration of the agreement. If there is no recapture due, then the County Supervisor will proceed in accordance with paragraph (g) of this section.

(d) *Notification of recapture due.* If the County Supervisor determines that the borrower has sold the real estate, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(1) The amount of recapture due in accordance with exhibits C or C-1 of this subpart, as applicable. The County Supervisor will establish an equity receivable account in accordance with the provisions of the ADPS manual;

(2) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower);

(3) Appeal rights as set forth in subpart B of part 1900 of this chapter; and

(4) If the borrower fails to pay any amount due to FmHA or its successor agency under Public Law 103–354 as the result of a sale of the property, the account will be accelerated as set forth in § 1955.15 of subpart A of part 1955 of this chapter after all appeal rights have been exhausted.

(e) *Processing payments.* The County Supervisor will issue Form FmHA or its successor agency under Public Law 103–354 451–2, “Schedule of Remittance,” for all the payments received under the Recapture Agreement. The following should be recorded in the body of the form: “Equity Receivable Payment.”

(f) *Release of liability.* When the total amount due under the agreement has been paid and credited to the borrower’s account, the borrower will be released from personal liability. The recapture agreement will be marked “Recapture Agreement Satisfied” and returned to the debtor or to the debtor’s legal representative. In such cases, the security instrument(s) will be released of record in accordance with subpart A of part 1965 of this chapter.

(g) *No recapture due.* If the County Supervisor determines there is no recapture due, the County Supervisor will close the borrower’s equity record in accordance with the provisions of the ADPS manual. Exhibit C or C–1 of this subpart, as applicable, will be terminated and security instruments will be processed as set forth in paragraph (f) of this section.

**§ 1951.914 Servicing shared appreciation agreements.**

(a) [Reserved]

(b) *When shared appreciation is due.* For agreements entered into on or after August 18, 2000, the term of the agreement is five years. Shared appreciation is due at the end of either a five or ten year term, as specified in the Shared Appreciation Agreement, or sooner, if one of the following events occur:

(1) The sale or conveyance of any or all the real estate security, including gift, contract for sale, purchase agreement, or foreclosure. Transfer to the spouse of the borrower in case of the

death of the borrower will not be treated as a conveyance; until the spouse further conveys the property;

(2) Repayment of the loans; or the loans are otherwise satisfied;

(3) The borrower or surviving spouse ceases farming operations or no longer receives farm income, including lease income; or

(4) The notes are accelerated.

(c) *Determining the amount of shared appreciation due.* (1) The value of the real estate security at the time of maturity of the Shared Appreciation agreement (current market value) shall be the appraised value of the security at the highest and best use less the increase in the value of the security resulting from capital improvements added during the term of the Shared Appreciation Agreement (contributory value) as set out herein. The current market value of the real estate security property will be determined based on a current appraisal in accordance with 7 CFR § 761.7 and subject to the following:

(i) Upon request, the borrower will identify any capital improvements that have been added to the property since the execution of the Shared Appreciation Agreement.

(ii) The appraisal must specifically identify the contributory value of capital improvements made to the Agency real estate security during the term of the Shared Appreciation Agreement in order to make deductions for that value under this subsection.

(iii) For calculation of Shared Appreciation recapture, the remaining contributory value of capital improvements added during the term of the Shared Appreciation Agreement will be deducted from the current market value of the property. Such capital improvements must also meet at least one of the following criteria:

(A) It is the borrower’s primary residence. If the new residence is affixed to the real estate security as a replacement for a home which existed on the security property when the Shared Appreciation Agreement was originally executed, or the living area square footage of the original dwelling was expanded, only the value added to the real property by the new or expanded portion of the original dwelling (if it